

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:19-CR-00093-RJC-DCK

USA)
)
v.) ORDER
)
TONY O'BRIAN DAVIS)
)

THIS MATTER is before the Court upon motion of the defendant pro se for court recordings from the court reporter. (Doc. No. 133). He claims that transcripts given to his appellate attorney have been “doctored, fixed to thwart” his appeal. (Id. at 1).

The Court Reporter Act requires verbatim recording of court proceedings by shorthand, mechanical, electronic sound recording, or other approved means. 28 U.S.C. § 753(b). Such notes must be preserved as public records for at least ten years and available for inspection during clerk’s office hours by any person. Id. Where audiotapes merely back up a court reporter’s stenographic record, they are not considered judicial records, but rather the personal property of the reporter. United States v. Davis, 648 F. App’x 295, 297 (4th Cir. 2016) (citing Smith v. U.S. Dist. Court Officers, 203 F.3d 440, 442 (7th Cir. 2000)). Accordingly, a defendant does not have a right of access to such back-up recordings absent a showing sufficient “to distrust the accuracy of the stenographic transcript.” Id. Courts have repeatedly held that a defendant’s assertions of error are insufficient to overcome the statutory presumption of accuracy of a certified transcript. See e.g. United

States v. Smith, Case No. 3:08-cr-32, 2013 WL 12143966, at *1 (E.D. Va. Apr. 8, 2013) (collecting cases), aff'd, 546 F. App'x 195 (4th Cir. 2013), cert. denied, 134 S. Ct. 1529 (2014).

Here, the court reporter certified pursuant to 28 U.S.C. § 753 that the filed transcripts are true and correct. (Doc. Nos. 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130). The defendant's bald assertion of falsity is insufficient to warrant accessing any recordings for unspecified error.

IT IS, THEREFORE, ORDERED that the defendant's motion, (Doc. No. 133), is **DENIED**.

Signed: September 14, 2021



Robert J. Conrad, Jr.
United States District Judge